IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD
(Special Original Jurisdiction)

THURSDAY, THE FIRST DAY OF JULY
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MRS JUSTICE T.MEENA KUMARI

WRIT PETITION NO : 12648 of 1994

Between:

G. Munirathnam Reddy S/o. Nataraja Reddy
r/o. 1-8, Bandla Mitta Street, Tiruchanoor, Chittoor District.

..... PETITIONER

AND

1. Revenue Divisional Officer Tirupathi, Chittoor District.
2. Mandal Revenue Officer Tirupathi (Rural) Mandal, Chittoor District.
3. District Collector, Chittoor.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ of Mandamus or any other appropriate Writ or direction declaring the order of the 1st respondent passed in Roc.G/320/94 dated 7.6.1994 as illegal and without jurisdiction and pass such further or other orders

Counsel for the Petitioner: MR.O.MANOHER REDDY

Counsel for the Respondents: GP FOR REVENUE

The Court Made the Following ORDER:

The present writ petition has been filed for declaration of the orders passed by the Revenue Divisional Officer, the first respondent herein, in Roc.G/320/94 dated 7-6-1994 as illegal and without jurisdiction.

The case of the petitioner is that he made an application to the Inams Deputy Tahsildar, Chittor for grant of Ryotwari patta for the land in S.No.419/2 admeasuring an extent of Ac.3.61 cents situated at Tiruchanoor village, under the provisions of Inams Abolition Act. The Inam Deputy Tahsildar after conducting a detailed enquiry, through proceedings dated 18-5-1985 granted Ryotwari patta in favour of the petitioner. Thereafter, after a period of 9 years, the Mandal Revenue Officer, the second respondent herein, filed an appeal before the Revenue Divisional Officer, Thirupati, Chittor District, the first respondent herein, with an application to condone the delay in filing the appeal. In that appeal the petitioner herein filed his counter affidavit stating that the Revenue Divisional Officer has no jurisdiction to entertain the appeal after a long lapse of limitation period and also the appeal is not maintainable. After hearing the matter at length and after perusing the grounds of appeal set up by the District Collector, Chittoor District, the third respondent herein, and the judgments referred to in the appeal, the Revenue Divisional Officer stayed the order of the Inam Deputy Tahsildar vide proceedings in Roc.G/320/94 dated 7-

6-1994.

The grievance of the petitioner is that the procedure followed by the first respondent without deciding the appeal filed by the Mandal Revenue Officer on merits and entertaining the application filed by the third respondent is wholly illegal and without jurisdiction. Hence the present writ petition.

It has been contended by the learned counsel for the petitioner that the second respondent has filed an appeal before the first respondent against the order of granting Ryothwari patta vide proceedings SR No.68/85 dated 18-5-1985 to the extent of Ac.3.61 in S.No.419/2 of Tiruchanoor village in favour of the petitioner. Learned counsel further argued that the first respondent has granted stay of operation of the order dated 18-5-1985 passed by the Inam Deputy Tahsildar, basing on the ground that there is prima facie case that the land in question is a communal poramboke land. It has also been argued that the District Collector has preferred the appeal basing on the judgment of this court in W.P.Nos.2661 and 7677 of 1987 and Contempt Case No.243 of 1987 dated 22-12-1987. Though the appeal was preferred after a period of 9 years, granting of stay itself amount to condoning the delay of 9 years *suo motu* by the Revenue Divisional Officer. He also argued that powers delegated to the authorities have to be exercised within a reasonable time and the first respondent ought not have granted stay of operation of the order of the year 1985. In view of the long lapse of time, the order has already been acted upon. Learned counsel has relied upon a decision of the Supreme Court in STATE OF GUJARAT v. PATEL RAGHAVNATHA AND ORS.[1] to substantiate his contention.

In the counter affidavit filed by the respondents it is

stated that the Revenue Divisional Officer has stayed the operation of the Inam Deputy Tahsildar. The fact of grant of Ryotwari patta to the petitioner, came to the notice of the District Administration only on 18-4-1994. It has also been observed that the Mandal Revenue Officer, Tirupati Rural Mandal under whose jurisdiction the survey numbers have situated, has filed an affidavit before the appellate authority stating that he has no objection for preferring an appeal by the District Collector and hence the appeal has to be entertained.

But, however, the learned counsel for the petitioner argued that it is not a ground to entertain the appeal and there is no application for condonation of delay and without prior notice to the petitioner after a long lapse of time the appeal has been filed and that the reasons for condoning the delay have not been shown. The learned counsel further argued that the third respondent cannot supplement the reasons in the counter affidavit for not preferring the appeal.

On the other hand learned counsel for the respondents contended that in pursuance of the instructions issued by the Collector, Chittoor in his reference No.B4/594/93, dated 15-8-1993, raids were conducted to know about the grant of Ryotwari patta to the petitioner and hence the Collector has preferred the appeal.

A reading of the counter affidavit shows that the Mandal Revenue Officer, Tirupati has given no objection for preferring the appeal and it cannot be a ground for grant of stay even without issuing any notice to the petitioner. It has also to be observed that there is no mentioning of filing of any petition to condone the delay of 9 years. In the counter affidavit, the respondents have tried to supplement fresh reasons for preferring appeal.

In MOHINDER SINGH v. CHIEF ELECTION COMMISSIONER[2] the Apex Court held as under:

> " When a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise an order bad in the beginning may by the time it comes to court on account of a challenge, get validated by additional grounds later brought out."

In view of the decision of the Apex Court, it has to be held that the respondents cannot supplement the reasons in the counter affidavit without filing any application before the concerned authorities for condoning the delay of 9 years. It has also to be observed that the statement of the Mandal Revenue Officer that he has no objection for preferring the appeal, cannot be a ground for grant of stay, and the Revenue Divisional Officer acted in violation of the principles of natural justice and even assuming that the authorities have every right to prefer an appeal, they could have done so within the period of limitation and more so within a period of reasonable time.

In the absence of both the ingredients it has to be observed that the Revenue Divisional Officer has exercised his power on his own accord in condoning the delay of 9 years when there is no material available before him. The above decision of the Revenue Divisional Officer is contrary to the law laid down by the Apex Court in *Patel Ragavnatha's case* (1 supra) which has been followed by a catena of decisions one of which is KONDANDA RAO v. GOVERNMENT OF A.P.,[3].

In view of the above it has to be held that the order of the first respondent in granting stay of operation of the order passed by the Inam Tahsildar after a period of 9 years has no basis. Accordingly, the impugned order is quashed. But, however, it is made clear that it is left open to the parties to agitate on merits with regard to the preferring of appeal by the concerned parties before the appropriate court.

With the above observations, the Writ Petition is allowed. No costs.

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T. Meena Kumari, J.

1st July, 2004
js.

ASSISTANT REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1. Revenue Divisional Officer Tirupathi, Chittoor District.
2. Mandal Revenue Officer Tirupathi (Rural) Mandal, Chittoor District.
3. District Collector, Chittoor.
4. Two CCs to G.P. for Revenue, High Court Buildings, High Court of A.P., Hyderabad. (OUT).
5. 2 CD copies.

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[1] AIR 1969 SC 1297
[2] AIR 1978 SC 851
[3] 1981 (2) ALT 280